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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 CARLOS RAUL BARBA,

12 Petitioner,

13 v.

14 MATTHEW CATE, EDMUND C.  
15 BROWN,

16 Respondents.

Case No. 10cv1483 BTM(POR)

**ORDER DISMISSING CASE**

17 Carlos Raul Barba ("Barba") has filed a Petition for a Writ of Coram Nobis pursuant  
18 to 28 U.S.C. § 1651(a).

19 Barba did not pay the \$350 filing fee, nor did he file a motion to proceed in forma  
20 pauperis. Therefore, this case is dismissed.

21 Furthermore, although Barba styles his petition as a Petition for a Writ of Coram  
22 Nobis, Barba is attacking his state conviction for attempted murder and being an ex-felon in  
23 possession of a firearm. Barba is still in custody for this conviction. "The writ of error coram  
24 nobis affords a remedy to attack a conviction when the petitioner has served his sentence  
25 and is no longer in custody." McKinney ex rel. Estate of McKinney v. United States, 71 F.3d  
26 779, 781 (9th Cir. 1995). Furthermore, coram nobis relief is not available in federal court to  
27 challenge a state conviction. United States v. Monreal, 301 F.3d 1127, 1131 (9th Cir. 2002)  
28 ("writ of error coram nobis attacking [a state] conviction may only be brought in the

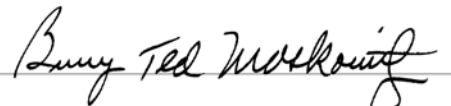
1 sentencing court.”) Accordingly, Barba may not seek coram nobis relief.

2 To the extent the Court construes Barba’s Petitioner as a Petition for Writ of Habeas  
3 Corpus, Barba’s Petition is successive. Barba challenged the same conviction and raised  
4 the same ground regarding erroneous jury instructions in a habeas petition filed in Case No.  
5 99cv0638 JM(JFS). The habeas petition was denied on August 18, 2000. A claim presented  
6 in a second or successive habeas corpus application that was presented in a prior  
7 application shall be dismissed. 28 U.S.C. § 2244(b)(1). Moreover, before filing a successive  
8 petition, the petitioner must file a motion with the Ninth Circuit Court of Appeals for an order  
9 authorizing the district court to consider the petition. 28 U.S.C. § 2244 (b)(3). It does not  
10 appear that Barba has satisfied this pre-filing requirement.

11 For all of these reasons, this case is **DISMISSED**. The Clerk shall enter judgment  
12 accordingly.

13 **IT IS SO ORDERED.**

14 DATED: July 21, 2010

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16  
17 Honorable Barry Ted Moskowitz  
United States District Judge